

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
ALLIED CHEMICAL CORPORATION,  
INDUSTRIAL CHEMICALS DIVISION,

Appellant,

v.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB Nos. 1018 and 77-41

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of two orders invoking the air pollution control law, concerns the proposed alteration of an air contaminant source. Hearing was held before the Pollution Control Hearings Board, W. A. Gissberg, Chairman, Chris Smith and Dave J. Mooney at a formal hearing in Lacey, on June 20 and 21, 1977. Hearing examiner William A. Harrison presided.

Appellant was represented by its attorney, Robert L. Gunter; respondent was represented by its attorney, James D. Ladley. Sherri Darkow, court reporter, recorded the proceeding.

1        Having heard the testimony, having seen the exhibits and being  
2        fully advised, the Pollution Control Hearings Board makes these

3                                FINDINGS OF FACT

4                                I

5        The appellant, Allied Chemical Corporation, owns and operates an  
6        alum manufacturing plant in Vancouver, Washington. In the course of  
7        manufacturing alum, appellant emits contaminants, known as particulate  
8        matter, into the air.

9                                II

10       On April 20, 1976, the respondent, Southwest Air Pollution Control  
11       Authority, issued an Order of Violation No. 76-169 to appellant. The  
12       order required appellant to either (1) immediately abate its emission  
13       of air contaminants, or (2) immediately install new emission control  
14       apparatus. Appellant appealed that Order, which appeal is our No. 1018.

15                               III

16       On November 8, 1976, appellant proposed the installation of new  
17       emission control apparatus by submitting plans to respondent. ("Notice  
18       of Construction and Application for Approval, CL-275.") Appellant's  
19       plans called for the addition of equipment known as a "slurry feed  
20       system" and a "mist eliminator." Respondent issued its Order No. 77-236  
21       preventing the addition of this equipment on March 22, 1977. The Order  
22       found that the pollution control equipment proposed by appellant would  
23       not be effective enough to meet respondent's regulatory and statutory  
24       standards. Appellant appealed that Order, which is our No. 77-41.

25                               IV

26       The effectiveness of appellant's proposed equipment, in reducing

27       FINAL FINDINGS OF FACT,  
             CONCLUSIONS OF LAW AND ORDER

( 1 particulate emissions, depends on the size of particles involved. The  
2 size of the particles is not determinable without careful, complex  
3 testing. Although equally qualified experts differ on the type of  
4 testing which will reliably determine particle size, we find that the  
5 test conducted by appellant and reported as Exhibit A-5 is reliable and  
6 accurate. In doing so we note that this was the type of test recommended  
7 by respondent.

8 V

9 Application of the new equipment proposed by appellant will therefore  
10 probably reduce particulate emissions from present levels of 1.13 grains  
11 per standard cubic foot (gr/SCF) to .013 gr/SCF, a reduction of 98.85%.

12 Emissions of .013 gr/SCF is well within the emission standards  
( 3 requiring (a) less than .1 gr/SCF (respondent's Regulation 2, Article V,  
14 § 5.02) and (b) less than 20% opacity (State of Washington, Department  
15 of Ecology, WAC 18-04-040(1)(b)).

16 VI

17 Any Conclusion of Law which should be deemed a Finding of Fact is  
18 hereby adopted as such.

19 From these Findings, the Pollution Control Hearings Board comes to  
20 these

21 CONCLUSIONS OF LAW

22 I

23 The Hearings Board has jurisdiction over the persons and subject  
24 matter of this proceeding.

25 II

( 6 In order to alter an air contaminant source so as to significantly

27 FINAL FINDINGS OF FACT,  
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1 affect emissions,<sup>1</sup> one must show that the alteration:

2 1. "... is designed and will be installed to operate without  
3 causing a violation of the emission standards,"<sup>2</sup> and

4 2. "... incorporates advances in the art of air pollution  
5 control developed for the kind and amount of air contaminant emitted  
6 by the equipment,"<sup>3</sup> and

7 3. "... will not cause any ambient air quality standard to be  
8 exceeded."<sup>4</sup>

9 See Weyerhaeuser v. SWAPCA, PCHB No. 735, (1975), Conclusion of Law II,  
10 p. 12.

11 The above three elements must be shown by plans submitted before  
12 the alteration is constructed. Respondent's Regulation 1, Article III,  
13 §§ 3.01 and 3.03.

14 III

15 During hearing, respondent stipulated that if appellant's proposed  
16 alteration would meet the .1 gr/SCF and 20% opacity emission standards  
17 by reducing emissions to .013 gr/SCF, such reduction would also  
18 constitute advances in the art and would not cause any ambient air  
19 quality standard to be exceeded. By our Finding of Fact V, we have  
20 established that appellant's proposed alteration will probably reduce  
21 particulate emissions to .013 gr/SCF. Appellant has therefore made the

22

23 1. Respondent's Regulation 1, Article III, § 3.01.

24 2. Respondent's Regulation 1, Article III, § 3.03(b)(1).

25 3. Respondent's Regulation 1, Article III, § 3.03(b)(2).

26 4. RCW 70.94.152(2).

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 showing which entitles it to alter its air contaminant source as  
2 proposed.

3 IV

4 In General Tire & Rubber Co. v. SWAPCA, PCHB No. 802, (1975) we  
5 held that:

6 The requirement of advances in the art should be determined  
7 prior to approval of any construction and should not be the  
8 basis upon which an Order of Violation is issued. (Conclusion  
of Law IV, p. 7.)

9 The Order of Violation referred to was the post-construction Order of  
10 Violation described in Regulation 1, Article III, § 3.04(a).

11 In the same case, however, we stated that:

12 Of course, if appellant hereafter [post-construction]  
13 exceeds any emission standard of Regulation I, it would be  
14 subject to enforcement action therein provided, Section  
3.04(c). (Conclusion of Law III, p. 7, [Brackets added].)

15 Appellant therefore constructs its alteration at its own peril should  
16 actual performance cause violation of any emission standard, despite  
17 our present finding that the same will probably not occur based on  
18 tests and plans made prior to construction.

19 Further, even though the appellant's new construction actually  
20 operates in such a manner so as to meet the grain loading emission  
21 standard (Section 5.02 of Article V), we will not hesitate to affirm  
22 civil penalties, if factually warranted, imposed by the Southwest Air  
23 Pollution Control Authority for violations of its visual emission  
24 standards (Section 4.02) or its odorous gas standards (see Section 5.03).

25 We therefore must caution appellant to carefully consider all of the  
26 potential consequences of its action in light of the fact that there is

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1 no guarantee to it that its proposal will enable it to meet all of the  
2 respondent's regulations while, on the other hand, the installation of  
3 more expensive equipment may prove to be more economical in the long  
4 term.

5 V

6 Any Finding of Fact which should be deemed a Conclusion of Law is  
7 hereby adopted as such.

8 From these Conclusions, the Pollution Control Hearings Board makes  
9 this

10 ORDER

11 Respondent's Order of Violation No. 76-169 in PCHB No. 1018, is  
12 affirmed.

13 Respondent's Order for Prevention, No. 77-236 in PCHB No. 77-41,  
14 is vacated.

15 Remanded to respondent with instructions to issue its "Approval of  
16 Construction" for appellant's "Notice of Construction and Application  
17 for Approval, CL-275."

18 DATED this 11<sup>th</sup> day of July, 1977.

19 POLLUTION CONTROL HEARINGS BOARD


20 W. A. Gissberg  
21 W. A. GISSBERG, Chairman

22 See dissent  
23 CHRIS SMITH, Member

24 Dave J. Nooney  
25 DAVE J. NOONEY, Member

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1 SMITH, Chris (dissenting)--I disagree with the majority for the  
2 following reasons: I find that the source test report conclusions  
3 (appellant's Exhibit 5) offered by appellant were based upon erroneous  
4 data because of the use of an improper testing procedure which could  
5 not accurately distinguish between quantities of sulfur dioxide and of  
6 sulfuric acid. Thus, I do not feel that appellant has met its burden  
7 of proof upon which the remainder of its case relies. Rather, the  
8 evidence shows that an average of 0.073 gr/SCF of acid would be emitted  
9 rather than 0.0053 gr/SCF as appellant contends and as the majority of  
10 the Board has been persuaded to find. These emissions are averages and  
11 do not account for the wide variation from batch to batch which can  
12 range from 0.031 gr/SCF to 0.105 gr/SCF. See Appendix 6, appellant's  
13 Exhibit A-5. Additionally, the duration of the test period over which  
14 the data was collected, i.e., 40 minutes, resulted in time averaged  
15 values for emissions rather than peak values. A shorter time period,  
16 e.g., 10 minutes, would have produced more accurate data. See Figure 2,  
17 Appendix 6, appellant's Exhibit A-5. Respondent has cast sufficient  
18 doubt upon the validity of the appellant's test and I would expect that  
19 the opacity and particulate matter emission standards of  
20 WAC 18-04-040(1)(b) (now WAC 173-400-040(1)), which standards are not to  
21 be exceeded, will be violated. I would affirm the action of respondent.

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23   
24 CHRIS SMITH, Member  
25  
26  
27